

1986

# State of Utah, Department of Social Services, Office of Recovery Services v. Betty A. Whitaker : Reply Brief

Utah Court of Appeals

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UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO. 860673

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, DEPARTMENT OF )  
SOCIAL SERVICES, OFFICE OF )  
RECOVERY SERVICES, )

Plaintiff )  
Respondent, )

v. )

BETTY A. WHITAKER, )

Defendant )  
Appellant. )

Case No. 860673  
Category No. 13 b.

REPLY BRIEF OF APPELLANT

Appeal from a final judgment by the Honorable Ronald  
O. Hyde, Second District Court Judge, entered on November 24,  
1986.

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Attorney for Defendant

**FILED**

AUG 7 1987

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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SOCIAL SERVICES, OFFICE OF )  
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IN THE SUPREME COURT OF THE STATE OF UTAH

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	)	
Plaintiff-	)	
Respondent,	)	
	)	
v.	)	Case No. 860673
	)	
BETTY A. WHITAKER,	)	
	)	
Defendant-	)	
Appellant.	)	

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REPLY BRIEF OF APPELLANT

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Throughout its responding brief, plaintiff maintains that the administrative proceeding which was underway prior to the filing of its complaint dealt solely with the issue of case closure. Thus, it declares:

- a. The fair hearing officer's responsibility was to make a decision whether the case closure was proper under APA law and policy. Brief of Respondent, at 13;
- b. The important point for this appeal is that the administrative hearing officer is not reviewing whether a debt in a sum certain is due and owing, but merely whether closure of a public assistance case was proper." Brief of Respondent, at 15; and
- c. The fair hearing officer's decisions deal with eligibility standards and case closure." Brief of Respondent, at 19.

Plaintiff's assertions leave unanswered several significant questions:

1. If the administrative proceeding was concerned solely with eligibility standards and proper case closure, why was the Office of Recovery Services (ORS), whose very name implies that it is in the business of recovering overpayments, so heavily involved in that administrative process?

2. Why did Mr. Terry Schow, an ORS investigator, send three separate notices to defendant concerning the overpayment during the latter months of 1984? (Appendix "I-1-3" of Appellant's Brief)

3. Why did Mr. Schow receive notice of defendant's September 17, 1985 hearing? (Attached as Appendix "T")

4. Why did the ORS representative (Terry Schow) appear at defendant's administrative hearing and concede certain facts?<sup>1</sup> (Plaintiff's Exhibit "I", at xxviii)

5. Why did Emma Chacon, ORS Bureau Director, submit a "significant response to the Claimant's Memorandum which could impact the outcome of this case."? (Attached as Appendix "U")

6. Why did plaintiff's counsel, who represents ORS on overpayments but who does not represent the State of Utah on case closures, contact the Hearing Examiner by letter dated December 13, 1985 concerning defendant's pending administrative case? (Plaintiff's Exhibit "K", at xxxiii)

7. Why did plaintiff's counsel by letter dated October 31, 1986 contact The Honorable Bill L. Walker, Administrative Law Judge, in response to defendant's appeal of the hearing decision? (Plaintiff's Exhibit "J", at xxxii)

The answer to these questions is clear: ORS through its representatives and legal counsel was involved at every stage of the administrative proceeding for the sole purpose of

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<sup>1</sup>The relevant portion of the decision states: "The Office of Recovery Services' representative considered this fact at the hearing." Considering the context, the word intended was probably "conceded."

establishing and thereafter recovering an overpayment. Its involvement had nothing to do with a determination of eligibility or proper closure of plaintiff's case; instead, its efforts were directed toward a res judicata factual determination that an overpayment existed which could then be used as a basis for recovery through the judicial process or through the administrative procedures available under U.C.A. §55-15e-1 et. seq.

Plaintiff makes further assertions concerning the issue before the fair hearing officer which are not supported by the record. It states:

a. The fair hearing officer's responsibility was to make a decision whether the case closure was proper under APA law and policy. (Brief of Respondent, at 13; and

b. The fair hearing officer is not responsible to adjudicate a specific overpayment debt. (Brief of Respondent, at 14) (emphasis in the original)

However, when the fair hearing officer's decision is examined, the opposite is true. The Hearing Examiner speaks not of case closure but of whether an overpayment was correctly computed. Plaintiff's Exhibit "I", at xxv. Pertinent portions of the fair hearing officer's decision state:

a. NOW THEREFORE IT IS ORDERED: That the decision by the District I Office of Community Operations in computing a Financial Food Stamp overpayment is hereby sustained. (Plaintiff's Exhibit I, at xxv);

b. The claimant requested the hearing on December 26, 1984 to appeal a decision .... closing the claimant's financial assistance case and subsequent determination of an overpayment. (Plaintiff's Exhibit I, at xxvi);

c. It is undisputed that the November and December, 1984 notices contained no explanation of the decision for the overpayment determination. (Plaintiff's Exhibit "I", at xxix);



d. The Hearing Examiner, however, finds that the claimant's overpayment is properly before the Hearing Examiner, and he does have the right to review the case based upon the facts. (Plaintiff's Exhibit "I", at xxx)

e. The significant factual issue before the Hearing Examiner is whether or not there is an overpayment existing based upon the equity in the house. (Plaintiff's Exhibit "I", at xxx-xxxi); and

f. The decision by the District I Office of Community Operations in computing a Financial Food Stamp overpayment is hereby sustained. The overpayment should be classified as a factual error. (Plaintiff's Exhibit "I", at xxxi)

Nowhere in the Hearing Examiner's decision is there indication that the sole purpose of the administrative proceeding was to determine whether the case had been properly closed. The content of the administrative decision shows that the purpose of the hearing was to establish whether an overpayment existed. If it did, and if defendant took no further appeal of that decision, ORS could have recovered the overpayment in several ways:

a. Had defendant again become eligible for financial assistance, the overpayment could have been recovered through an allotment reduction;

b. ORS could have used the decision as a res judicata factual determination for summary judgment purposes in a judicial proceeding;

c. Since ORS had filed a notice of overpayment determination under U.C.A. §55-15e, and since its representative (Schow) apparently stipulated to joinder of that action with the pending administrative proceeding, ORS could have arguably docketed a judgment pursuant to the authority found at U.C.A. §55-15e-8.

The factual determination at the administrative level had a real importance to ORS in its recovery of an alleged overpayment. Its participation at the administrative level evidences

that. Given this fact, plaintiff's argument that the administrative proceeding had no bearing on its filing of a complaint in district court is without merit.

At page 16 of its brief, plaintiff argues that it has clear statutory authority to bring an independent action at the same time the administrative case was pending. If the authority to file an independent action was so clear, one must question why plaintiff's complaint does not reflect that clarity. Instead of simply stating that it was demanding recovery of an overpayment, plaintiff made an ambiguous reference in paragraph 4 of its complaint to jurisdiction based on U.C.A. §55-15a-25 which permits a trial de novo following the conclusion of an administrative proceeding. Plaintiff's ambiguous pleading is relevant, since it evidences the fact that it did not consider its complaint to be an independent action, but rather a hybrid cause of action, sprung from its own imagination, by which it might invoke the jurisdiction of the district court and thereby obtain a prejudgment writ of attachment. Plaintiff's rationale that it had authority for an independent cause of action came after the fact when its jurisdictional basis was challenged by a motion to dismiss. While plaintiff's handiwork may be imaginative, the resulting creation does violence to the statute and tramples recklessly over established case law.

At several points in its brief, Plaintiff acknowledges the undesirable possibility of concurrent actions at the administrative and judicial levels. Plaintiff blithely concludes that "common sense" will eliminate concurrent litigation

of the same issue in both forums. Brief of Respondent, at 11, 25 Plaintiff glosses over the fact that common sense did not preclude concurrent actions in this case. Plaintiff further ignores the fact that even as this case is pending before this Court, the administrative decision in defendant's case is pending on appeal before an administrative law judge. Theoretically, the ALJ could rule in defendant's favor. Alternatively, the same ALJ could uphold the administrative decision, which would then trigger defendant's right to further review at the judicial level. As defendant has argued in her opening brief, adoption of plaintiff's legal argument could result in actions proceeding in three separate forums. See Brief of Appellant, at 16. Theoretically, all three proceedings could end up at the district and appellate court levels. It is such judicial ineconomy that the doctrine of exhaustion of administrative remedies was designed to prevent.

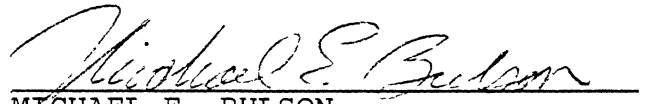
#### CONCLUSION

Administrative proceedings under U.C.A. §§55-15a and 55-15e are important means for the recovery of overpayments by ORS. Plaintiff has underscored the importance of such proceedings by its involvement in defendant's case throughout the administrative process. Plaintiff's involvement belies its facile assertion that the administrative process was solely for the purpose of determining whether defendant's case was properly closed. Under the relevant statutes and case law, an administrative procedure permitting alternative means for recovery

of an overpayment cannot be maintained concurrently with a judicial action.

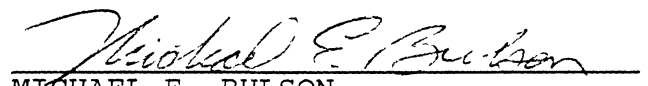
Approval of plaintiff's interpretation of the statute and case law will contribute to further confusion in the recovery of overpayments and further burden the Utah judicial system. Such an undesirable result can be easily avoided by application of the well-established doctrine of exhaustion of administrative remedies to this case.

DATED this 7<sup>th</sup> day of August, 1987.

  
MICHAEL E. BULSON  
Attorney for Appellant-Defendant

CERTIFICATE OF MAILING

I hereby certify that I mailed four true and correct copies of the foregoing REPLY BRIEF OF APPELLANT to Robert D. Barclay, Attorney for Plaintiff, at Office of Recovery Services, 2540 Washington Blvd., Ogden, Utah 84401, via first-class U.S. Mail, postage prepaid, this 7<sup>th</sup> day of August, 1987.

  
MICHAEL E. BULSON  
Attorney for Appellant-Defendant



## Social Services

Scott M. Matheson Governor State of Utah  
Norman G. Angus Executive Director

September 5, 1985

### NOTICE OF HEARING

Claimant: Betty Ann Whitaker  
240 North 100 West  
Brigham City, Utah 84302

Location: District II (A) OCO-APA Office  
385 - 24th Street, Third Floor  
Ogden, Utah 84401

Date and Time: September 17, 1985  
1:40 P.M.

Issues to be Considered: Overpayment/Office of Recovery Services Notice.

You are directed to appear and to bring such witnesses and evidence as you desire to present at that time. You may be represented by an attorney, and you may question witnesses and examine evidence presented at the hearing.

If the time, date or location of the hearing is inconvenient, or if you wish to withdraw your request for a hearing, please notify our office promptly in order that the hearing may be rescheduled or canceled.

Sincerely,

*Neal Bernson*

Neal Bernson  
Fair Hearing Officer

NB/ss

cc: Curtis L. Child  
Kyle Snow  
Julia Bosley  
Elaine Gunnarson  
Terry Schow  
Don Knight

NOTE: CHANGE OF DATE, TIME AND LOCATION OF HEARING.

Office of Administrative Hearings  
J. Steven Eklund Director

150 West North Temple Suite 353  
P.O. Box 2500 Salt Lake City Utah 84110-2500  
801-533-7386 & 533-6586

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APPENDIX T



## Social Services

## Memorandum

**To:** Neal Bernson  
Administrative Hearing Officer

**From:** Emma Chacon *[Signature]* Bureau Director  
Office of Recovery Services

**Subject:** Betty Ann Whitaker

**Date:** October 21, 1985

Due to my anticipated maternity leave in the near future and the extent of the Claimant's Memorandum filed in behalf of Betty Ann Whitaker by Mr. Curt Childs, I would like to request a continuance of the hearing and response time for a period of 60 days. The Office of Recovery Services will have a significant response to the Claimant's Memorandum which could impact the outcome of this case.

Your cooperation in this matter is appreciated. If you have any questions or comments, please contact me.

ELC/gt

cc: Brenda Hofer  
Elaine Gunnarson

ADMINISTRATIVE  
OCT 2 - 1985  
HEARINGS